SINGAPORE REPORTS

TAN AH TEE & ANOR. v. PUBLIC PROSECUTOR

[C.Cr.A. (Wee Chong Jin C.J., Kulasekaram & Chua JJ.) October 10, 1979]

[Singapore — Criminal Appeal No. 12 of 1978]

Misuse of Drugs — Trafficking — Possession of 459.3 gms of diamorphine — "Possession" — Construction of — Misuse of Drugs Act, 1973, ss. 2, 3(a), 16 & 29 — Penal Code (Cap. 103), s. 34 — Evidence Act (Cap. 5), s. 106 — Drugs (Prevention of Misuse) Act, 1964 (United Kingdom).

Criminal Law and Procedure — Charge — Element of offence.

The two appellants, *T.* and *L.* in this case were charged jointly for trafficking in 459.3 gms of diamorphine, an offence under section 3(a) of the Misuse of Drugs Act, 1973. The facts showed that on September 3, 1976 two Narcotics officers observed the appellants emerging from Block A of Far East Mansions, Kim Yam Road, Singapore and walking towards a parked car. *T.* was carrying a plastic bag. On reaching the car *T.* handed the plastic bag to *L.* and unlocked the car door. They then drove to Dickson Road followed by the two Narcotics officers. At Dickson Road, *L.* alighted from the car carrying the plastic bag. Cheong, one of the narcotics officers went up to her and identified himself and asked her what was in the said plastic bag. *L.* looked stunned and dropped the plastic bag. Cheong seized the plastic bag and after a violent struggle arrested her. *T.* was also arrested by Teo, the other narcotics officer.

The plastic bag was found to contain brownish solids which were analysed by the Government Chemist and found to contain 459.3 gms of diamorphine.

Both appellants denied knowledge of the contents of the said plastic bag. They did not call any witness to give evidence on their behalf. The learned trial judges found them guilty as charged. They appealed against their convictions.

Held, dismissing the appeals: (1) it is a fundamental rule of our criminal law that the prosecution must prove every element of the offence charged. This is a common law rule which is not embodied in any legislative enactment but is English in origin;

(2) section 3 of the Misuse of Drugs Act prohibits trafficking in a controlled drug save in the circumstances specified therein. Consequently the prosecution was under no necessity to prove a *prima facie* case of lack of authorisation and it was for each appellant to prove that he or she was authorised to do the prohibited act;

(3) it was unnecessary for the prosecution in this case to rely on section 106 of the Evidence Act to prove lack of authorisation;

(4) under the Misuse of Drugs Act where a person is in possession of a bag which contains in fact a controlled drug it is presumed that he is in possession of and knows the nature of the controlled drug unlike in the United Kingdom where there is only a *prima facie* strong inference that he is in possession of its contents;

(5) thus under the said Act the burden rests on the accused to prove on a balance of probabilities that he was not in possession of and did not know the nature of the controlled drug which was contained in the bag.

Cases referred to:-

(1) *R.* v. *Edwards*, [1974] 3 W.L.R. 285.
(2) *R.* v. *Stone* (1801) 1 East. 639.
(3) *Attygalle* v. *R.* [1936] 2 All E.R. 116.
(4) *Seneviratne* v. *R.* [1936] 3 All E.R. 36.
(5) *Jayasena* v. *R.* [1970] 1 All E.R. 219.
(6) *R.* v. *Warner* [1969] 2 A.C. 256.

COURT OF CRIMINAL APPEAL.

Tan Chor Yong for the first appellant.

Francis T. Seow (*Miss Aisha Alkaff* with him) for the second appellant.

Glenn Knight (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the judgment of the Court): At about 10.15 a.m. on September 3, 1976 two Narcotics Officers, Teo and Cheong, kept observation on a car with a Malaysian registration number BM.8854 which was parked near Block A of Far East Mansions, Kim Yam Road, Singapore. About ten minutes later the two officers saw a man, Tan Ah Tee and a woman, Low Hong Eng, emerging from Block A and walking towards the parked car. Tan Ah Tee was carrying a plastic bag. On reaching the car Tan Ah Tee handed the plastic bag to Low Hong Eng and unlocked the front passenger seat door. Low Hong Eng occupied the front passenger seat and Tan Ah Tee the driver's seat. The car proceeded from Kim Yam Road, with the two Narcotics Officers following it on a motor cycle, into River Valley Road, Tank Road, Clemenceau Avenue, Cavenagh Road, Kampong Java Road, Hampshire Road, Race Course Road, Kerbau Road, Upper Dickson Road to Dickson Road where it stopped.

Low Hong Eng alighted from the car carrying the plastic bag. Cheong went up to her, identified himself and asked her what was in the plastic bag she was carrying. She looked stunned and dropped the plastic bag. Cheong seized the plastic bag and after a violent struggle arrested her. Tan Ah Tee was arrested by Teo. The plastic bag was examined by Teo and found to contain three polythene bags wrapped in newsprint. The contents of the three polythene bags, on examination were brownish solids which Teo suspected to be diamorphine. Tan Ah Tee and Low Hong Eng were subsequently taken to the Central Narcotics Bureau where on the same day they made cautioned statements to Senior Narcotics Officer Lee Tai Huat.

In his cautioned statement Tan Ah Tee said: —

"On September 3, 1976 at 9.30 a.m. I went to Ah Pui's house at Blk. A, 18-G, Kim Yam Road, as this was arranged on the previous day. On my arrival at the house, Ah Pui handed over to me a plastic bag and I knew its contents were heroin and I was told that a female Chinese was waiting for me downstairs to accompany me to do delivery of the drug. I further received instruction from Ah Pui to hand over the plastic bag to the female Chinese and to send her home at Jalan Besar area. I left there with the female Chinese in my motor car BM.8854. The female Chinese all the way directed me down to Dickson Road. There she told me to stop and she got down from the car. She collected the plastic bag containing heroin from the car and walked away with it. This female was arrested and was taken to CNB together with me. The plastic bag seized by the officers was the one I handed to her while we were on our way down to Dickson Road."

In her cautioned statement Low Hong Eng said: —

"On September 3, 1976 at 9.30 a.m. I received a telephone call from a female voice who identified herself to be the wife of Ah Pui. Ah Pui was introduced to me by Ah Chen about one month ago. The caller requested to see me at the cooked food stalls opposite Kandang Kerbau Hospital. I took a taxi to the place. On my arrival at the food stalls opposite the hospital I saw Ah Pui standing on the roadside. I did not see any female Chinese there. Ah Pui came up to me and requested me to help him to deliver something to his friend. He then hailed a taxi and we boarded it. The taxi stopped at a place where there were flats. We got down from the taxi and Ah Pui told me to wait for him at the

foot of one of the flats. Ah Pui went away from there by foot. A short while later, a male Chinese approached me there and said that he was sent by Ah Pui to accompany me to deliver the thing. I saw him carrying only a plastic bag. This male Chinese then brought me into a motor car that was parked in the car park nearby. He then drove the car down to Dickson Road. He stopped the car and handed over a plastic bag to me. I took over the plastic bag and alighted from the car. While I was carrying the plastic bag, I was detained by a male Chinese who identified himself as CNB officer. The officer checked the contents of the plastic bag and informed me that I had heroin inside the bag. The male Chinese who handed me the plastic bag with its contents was also arrested somewhere there. The plastic bag with its contents belonged to him. Before I was detained by the officer, the male Chinese told me he would pay me $100 for my service for carrying the plastic bag. I also received instruction from this male Chinese that someone would come to collect the plastic bag from me. The male Chinese and myself were taken back to CNB."

The brownish solids were analysed by the Government Chemist, Mr. Lim Han Yong and were found to contain 459.3 grams of diamorphine.

Tan Ah Tee and Low Hong Eng were jointly charged and tried before the High Court on the following charge, viz.: —

"Tan Ah Tee @ Tan Kok Ser and Low Hong Eng, you are charged that you on or about the 3rd day of September 1976 at about 10.25 a.m. at Singapore, not being authorised by the Misuse of Drugs Act, 1973 (No. 5 of 1973) or the regulations made thereunder and in furtherance of the common intention of both of you, did traffic in a controlled drug specified in Class A of Part I of the First Schedule to the Misuse of Drugs Act, 1973 (No. 5 of 1973), to wit, 459.3 grams of diamorphine and you have thereby committed an offence under section 3(a) of the Misuse of Drugs Act, 1973 (No. 5 of 1973) read with section 34 of the Penal Code (Cap. 103) and punishable under section 29 of the said Misuse of Drugs Act."

We have outlined in brief the prosecution's case at the trial against Tan Ah Tee and Low Hong Eng. Tan Ah Tee's defence was that he did not know what was inside the plastic bag. He gave the following explanation of his movements and actions. He said he was a private taxi driver operating from Johore, West Malaysia and in the course of this occupation he came to know another Malaysian by the name of Ah Teo, who became a regular passenger travelling from Johore to a flat in Block A, Far East Mansions occupied by a person named Tan Weng Wan. On the day in question he had gone to this flat at the request of Ah Teo. He met Ah Teo at the flat and they left the flat together with Ah Teo carrying the plastic bag. In the lift going down Ah Teo gave him $20 and asked him to hand over the plastic bag to a woman friend whom he was to drive to a place near Kandang Kerbau market. When they came out of the lift, he saw a woman whom he recognised as a girl friend of Ah Teo. This woman was Low Hong Eng. He walked towards her carrying the plastic bag and told her that Ah Teo had asked him to hand to her the plastic bag he was carrying and for her to deliver it to Ah Teo's wife. Then he and Low Hong Eng walked to his parked car where he handed the plastic bag to her. He then, following her directions, drove his car to and stopped at Dickson Road. He did not know the contents of the plastic bag and he did not enquire of Ah Teo its contents.

Low Hong Eng's defence was that she was an innocent carrier who did not know the contents of the plastic bag. Her explanation at the trial was as follows. At 9.30 a.m. on September 3, 1976 she received a telephone call at home from the wife of a person known to her as Ah Pui (*alias* Ah Teo) requesting her to wait for the caller near Kandang Kerbau Hospital in connection with employment she was seeking. So she left her home but when she arrived at the appointed place it was Ah Pui who met her. Ah Pui told her that his wife had gone to the Rex Theatre to buy some tickets. He asked her to follow him to take something for his wife. So she accompanied him in a taxi to the ground floor of a very tall building where Ah Pui told her to wait for him. Sometime later Tan Ah Tee, whom she had met before, approached her carrying a plastic bag and asked her whether she had been taken there by Ah Pui. She replied "yes". Tan Ah Tee then asked her to get into his car and to carry the plastic bag for him without telling her its contents. He told her that Ah Pui had told him to take her to some place and that she was to hand the plastic bag to Ah Pui's wife. She did not know where they were going but when the car stopped she alighted from it intending to go to the Rex Theatre. After she had walked a short distance she was stopped by a government man who wanted to look at the contents of the plastic bag she was carrying. She refused and he then showed her his identification card and told her that the bag contained incriminating stuff. On hearing this she became frightened and wanted to drop the plastic bag but he stopped her from doing so. She then told him the plastic bag belonged to someone who had asked her to carry it for him. She pleaded with him not to arrest her and told him she could take him to the person she was to meet at the Rex Theatre. He agreed and took her across the road for a taxi to go to Rex Theatre. They were unable to get a taxi. He told her that it did not matter as the plastic bag did not belong to her. As they were returning towards Tan Ah Tee's car a police car arrived and she was taken to the Central Narcotics Bureau in the police car. She did not know that the plastic bag she was carrying contained diamorphine.

Tan Ah Tee and Low Hong Eng did not call any witness to give evidence on their behalf. The trial judges found them guilty of the offence as charged. The trial judges disbelieved them and found that they were not speaking the truth and that they both knew that the plastic bag contained heroin. They now appeal against their convictions.

It is contended on behalf of both appellants that the prosecution had failed to prove an essential element of the offence with which they were charged in that there was no evidence before the court that the appellants were persons who were not authorised by the Misuse of Drugs Act, 1973 or the regulations made thereunder to traffic in diamorphine, a controlled drug. The appellants were charged with having committed an offence under section 3(a) which reads as follows: —

"3. Except as authorised by this Act or the regulations made thereunder, it shall be an offence for a person, on his own behalf or on behalf of any other person, whether or not such person is in Singapore to —

(a) traffic in a controlled drug."

The expression "controlled drug" is defined in section 2 thus: —

"'Controlled drug' means any substance or product which is for the time being specified in Part I, II or III of the First Schedule to this Act or anything that contains any such substance or product;"

Diamorphine is a substance specified in Class A of Part I of the First Schedule to the Act.

It is a fundamental rule of our criminal law that the prosecution must prove every element of the offence charged. This is a common law rule which is not embodied in any legislative enactment but is English in origin. In England the Court of Appeal in *R.* v. *Edwards*[1] held that if an enactment under which a charge is laid, on its true construction, prohibits the doing of acts, subject to provisoes, exemptions and the like, then the prosecution can rely upon the exception to the fundamental rule of the common law of England that the prosecution must prove every element of the offence charged. The Court of Appeal so held after a thorough analysis of a long line of authorities beginning from *R.* v. *Stone*.[2] We quote below the judgment of the court in *R.* v. *Edwards, supra,* delivered by Lawton L.J. at pages 295-6: —

"In our judgment this line of authority establishes that over the centuries the common law, as a result of experience and the need to ensure that justice is done both to the community and to defendants, has evolved an exception to the fundamental rule of our criminal law that the prosecution must prove every element of the offence charged. This exception, like so much else in the common law, was hammered out on the anvil of pleading. It is limited to offences arising under enactments which prohibit the doing of an act save in specified circumstances or by persons of specified classes or with specified qualifications or with the licence or permission of specified authorities. Whenever the prosecution seeks to rely on this exception, the court must construe the enactment under which the charge is laid. If the true construction is that the enactment prohibits the doing of acts, subject to provisoes, exemptions and the like, then the prosecution can rely upon the exception.

In our judgment its application does not depend upon either the fact or the presumption, that the defendant has peculiar knowledge enabling him to prove the positive of any negative averment. As *Wigmore* pointed out in his great Treatise on Evidence (1905), volume 4, page 3525, this concept of peculiar knowledge furnishes no working rule. If it did, defendants would have to prove lack of intent. What does provide a working rule is what the common law evolved from a rule of pleading. We have striven to identify it in this judgment. Like nearly all rules it could be applied oppressively; but the courts have ample powers to curb and discourage oppressive prosecutors and do not hesitate to use them.

Two consequences follow from the view we have taken as to the evolution and nature of this exception. First, as it comes into operation upon an enactment being construed in a particular way, there is no need for the prosecution to prove a *prima facie* case of lack of excuse, qualification or the like; and secondly, what shifts is the onus: it is for the defendant to prove that he was entitled to do the prohibited act. What rests on him is the legal or, as it is sometimes called, the persuasive burden of proof. It is not the evidential burden."

In our opinion the law here is the same as the law in England as to when the prosecution can rely on the exception. It is limited to offences arising under enactments which on their true construction, prohibit the doing of an act save in specified circumstances or by persons of specified classes or with special qualifications or with the licence or permission of specified authorities.

What then is the true construction of section 3 of the Act? In our opinion the section prohibits trafficking in a controlled drug save in the circumstances specified therein i.e. save as authorised by the Act itself or the regulations made thereunder. Consequently, the prosecution was under no necessity to prove a *prima facie* case of lack of authorisation and it was for each appellant to prove that he or she was authorised to do the prohibited act. The appellants contend that section 106 of the Evidence Act which provides: "when any fact is specially within the knowledge of any person, the burden of proving that fact is upon him", cannot be relied on by the prosecution. They rely on two decisions of the Privy Council, *Attygalle* v. *R.*[3] and *Seneviratne* v. *R.*[4] in which an identical section in the Ceylon (now Sri Lanka) Evidence Ordinance was considered and was held not to apply to shift the burden of proving the guilt of the accused from the prosecution. In these cases the Board said simply and without elaboration that the section does not cast any burden of proving that no crime has been committed. There is, however, another decision of the Privy Council, *Jayasena* v. *R.*[5] where the Board in considering the section said: "The principle involved in this section derives from the English law of evidence, where it has however been sparingly used". In our opinion, it is unnecessary for the prosecution in proceedings under the Act to rely on section 106 of the Evidence Act to prove lack of authorisation.

The other contention raised on behalf of Tan Ah Tee, the first appellant, during the hearing of the appeal is that the trial judges did not give any adequate consideration to his defence. We cannot accept this contention. His defence was considered and rejected by the trial judges who disbelieved his evidence that he did not know what was inside the plastic bag and that all he did was to hand the plastic bag given to him by Ah Teo to the second appellant, Low Hong Eng, and drive her in his car to Dickson Road at the request of Ah Teo for which he was paid $20. He had in his cautioned statement admitted that when Ah Teo handed him the plastic bag he knew that its contents were heroin. Furthermore, in our opinion there was ample evidence to support the trial judges' finding that he knew the plastic bag contained heroin and was transporting it from a flat in Kim Yam Road to Dickson Road for delivery to someone.

We now deal with a contention raised on behalf of the second appellant, Low Hong Eng, which requires a consideration of the statutory presumptions contained in section 16 of the Act. Section 16 reads: —

"16.—(1) Any person who is proved to have had in his possession or custody or under his control —

(a) anything containing a controlled drug;

(b) the keys of anything containing a controlled drug;

(c) the keys of any place or premises or any part thereof in which a controlled drug is found; or

(d) a document of title relating to a controlled drug or any other document intended for the delivery of a controlled drug,

shall, until the contrary is proved, be presumed to have had such drug in his possession.

(2) And person who is proved or presumed to have had a controlled drug in his possession shall, until the contrary is proved, be presumed to have known the nature of such drug.

(3) The presumptions provided for in this section shall not be rebutted by proof that the accused never had physical possession of the controlled drug.

(4) Where one of two or more persons with the knowledge and consent of the rest has any controlled drug in his possession, it shall be deemed to be in the possession of each and all of them."

The contention is that although it cannot be disputed that the second appellant had possession of the plastic bag and that thereby she was correctly presumed to have had possession of the contents of the plastic bag and to have known that its contents were diamorphine, a controlled drug, the trial judges should have held, by drawing the correct inferences on the evidence before them, that she had rebutted these statutory presumptions. It is conceded that in order to rebut these presumptions the burden or onus is on her to prove, on a balance of probabilities, that she did not have possession under the Act of the contents of the plastic bag and did not know the nature of its contents.

With regard to the question of possession of the contents of the plastic bag it is submitted that the trial judges should have drawn the inference from her evidence that she did not in fact know what was contained inside the plastic bag. In our opinion there was no plausible evidence before the trial judges to require them to draw the inference that she was an innocent custodian of the contents of the plastic bag. Indeed, even if there were no statutory presumptions available to the prosecution, once the prosecution had proved the fact of physical control or possession of the plastic bag and the circumstances in which this was acquired by and remained with the second appellant, the trial judges would be justified in finding that she had possession of the contents of the plastic bag within the meaning of the Act unless she gave an explanation of the physical fact which the trial judges accepted or which raised a doubt in their minds that she had possession of the contents within the meaning of the Act.

As Lord Wilberforce said in *R.* v. *Warner*[6] at 312: —

"In all such cases, the starting point will be that the accused had physical control of something — a package, a bottle, a container — found to contain the substance. This is evidence — generally strong evidence — of possession. It calls for an explanation: the explanation will be heard and the jury must decide whether there is genuine ignorance of the presence of the substance, or such an acceptance of the package with all that it might contain, or with such opportunity to ascertain what it did contain or such guilty knowledge with regard to it as to make up the statutory possession. Of course it would not be right, or consistent with the terms of the Act, to say that the onus of showing innocent custody rests upon the accused. The prosecution must prove the offence, and establish its ingredients. But one starts from the point that the Act itself has exempted the great majority of cases of innocent possession, so that once the prosecution has proved the fact of physical control in circumstances not covered by an exemption and something of the circumstances in which this was acquired or held, this, in the absence of explanation, may be sufficient to enable a finding of possession to be made. On the other hand, the duty to submit the question of possession to the jury in this way does give the opportunity of acquittal to innocent carriers and custodians, who can put forward an explanation of the physical fact which a jury accepts."

The House of Lords in *R.* v. *Warner, supra,* were considering a point of law of general public importance stated by the Court of Appeal in these terms: —

"Whether for the purposes of section 1 of the Drugs (Prevention of Misuse) Act, 1964, a defendant is deemed to be in possession of a prohibited substance when to his knowledge he is in physical possession of the substance but is unaware of its true nature."

Under the United Kingdom 1964 Act there are no statutory presumptions such as are found in section 16 of the Act. In *R.* v. *Warner, supra,* Lord Pearce commenced his speech at page 302 in these words: —

"My Lords, the illicit drug traffic is a very serious evil. Parliament intended by the 1964 Act to prevent it so far as possible by penalising the unauthorised possession of certain drugs. There are three methods, broadly speaking, by which Parliament may have intended to achieve its purpose.

The first (for which the appellant contends) is this. Parliament, it is said, intended that the word 'possession' should connote some knowledge of the thing possessed and of its quality. It also intended that a defendant should only be convicted if he had a guilty mind. The extent of the knowledge and the exact nature of the guilty mind are problems which obviously overlap.

The second possible view (for which the Crown contend) is that Parliament intended that the defendant, even if innocent of any knowledge of the nature of the drug or any guilty knowledge, must be convicted when once it was shown that he had to his knowledge physical control of a thing which (whether he knows it or not) is or contains an unlawful drug.

Thirdly, Parliament may have intended what was described as a 'halfway house' in the full and able argument by counsel on both sides. Each acknowledged its possibility and certain obvious advantages, but neither felt able to give it any very solid support. By this method the mere physical possession of drugs would be enough to throw on a defendant the onus of establishing his innocence, and unless he did so (on a balance of probabilities) he would be convicted. The Explosive Substances Act, 1883, produces this fair and sensible result but it does so by express words ('Unless he can show that he had it in his possession for a lawful object')."

Lord Pearce went on to reject that Parliament may have intended the "halfway house" method and expressed his opinion on what Parliament intended at pages 304-306 in these words: —

"One must, therefore, attempt from the apparent intention of the Act itself to reach a construction of the word 'possession' which is not so narrow as to stultify the practical efficacy of the Act or so broad that it creates absurdity or injustice.

Parliament was clearly intending to prevent or curtail the drug traffic. Having defined a series of persons who may lawfully possess the drugs, it makes possession by all others unlawful, thus putting the drugs out of the reach of unauthorised persons. It was not merely forbidding them to possess drugs for unlawful or guilty objects. It was forbidding them to possess the drugs at all. Thus it would block up all unauthorised channels through which drugs might flow and would thereby establish a strict control of their dissemination. It was forbidding unauthorised possession even for worthy motives, e.g., by the person who, though not authorised, volunteers to carry them from the chemist (who is entitled to sell them) to the patient (who is entitled to consume them). This is made clear by the exemption (in section 1 (4)) of 'any servant of Her Majesty or constable acting in the course of his duty as such.' There is an assumption that the Act was intending to penalise those with no guilty intentions, since otherwise such an exemption would be unnecessary and absurd. As soon as everyone who has a good motive may with impunity possess them, the efficacy of the control is injured. For that reason it cannot, I think, have been intended that it should be a defence for an unauthorised person to show that he may have possessed the drugs for a laudable object or with no guilty intentions. For the unauthorised person is simply not allowed to have them for any object whatever.

For the same reason I do not think that possession was intended to be limited by legal technicalities to one of two alternatives, namely, either to mere physical possession or to mere legal possession. Both are forbidden. A man may not lawfully own the drugs of which his servant or his bailee has

physical possession or control. Nor may he lawfully have physical possession or control as servant or bailee of drugs which are owned by others. By physical possession or control I include things in his pocket, in his car, in his room and so forth. That seems to me to accord with the general popular wide meaning of the word 'possession' and to be in accordance with the intention of the Act.

On the other hand, I do not think Parliament intended to make a man guilty of possessing something when he did not know that he had the thing at all. And it is there that the real difficulties begin.

Lord Parker C.J. ([1967] 2 Q.B. 243, 248) was right (and this is conceded by both sides) in taking the view that a person did not have possession of something which had been 'slipped into his' bag without his knowledge. One may, therefore, exclude from the 'possession' intended by the Act the physical control of articles which have been 'planted' on him without his knowledge. But how much further is one to go? If one goes to the extreme length of requiring the prosecution to prove that 'possession' implies a full knowledge of the name and nature of the drug concerned, the efficacy of the Act is seriously impaired, since many drug pedlars may in truth be unaware of this. I think that the term 'possession' is satisfied by a knowledge only of the existence of the thing itself and not its qualities, and that ignorance or mistake as to its qualities is not an excuse. This would comply with the general understanding of the word 'possess'. Though I reasonably believe the tablets which I possess to be aspirin, yet if they turn out to be heroin I am in possession of heroin tablets. This would be so I think even if I believed them to be sweets. It would be otherwise if I believed them to be something of a wholly different nature. At this point a question of degree arises as to when a difference in qualities amounts to a difference in kind. That is a matter for a jury who would probably decide it sensibly in favour of the genuinely innocent but against the guilty.

The situation with regard to containers presents further problems. If a man is in possession of the contents of a package, *prima facie* his possession of the package leads to the strong inference that he is in possession of its contents. But can this be rebutted by evidence that he was mistaken as to its contents? As in the case of goods that have been 'planted' in his pocket without his knowledge, so I do not think that he is in possession of contents which are quite different in kind from what he believed. Thus the *prima facie* assumption is discharged if he proves (or raises a real doubt in the matter) either (a) that he was a servant or bailee who had no right to open it and no reason to suspect that its contents were illicit or were drugs or (b) that although he was the owner he had no knowledge of (including a genuine mistake as to) its actual contents or of their illicit nature and that he received them innocently and also that he had had no reasonable opportunity since receiving the package of acquainting himself with its actual contents. For a man takes over a package or suitcase at risk as to its contents being unlawful if he does not immediately examine it (if he is entitled to do so). As soon as may be he should examine it and if he finds the contents suspicious reject possession by either throwing them away or by taking immediate sensible steps for their disposal.

So to read the Act would, I think, accord with what Parliament intended and would give it a sense which would accord with the practical views of a jury, although I realise that a deeper investigation of the legal implications of possession might support various differing views. It would leave some unfortunate victims of circumstances who move innocently but rashly in shady surroundings and who carry packages or tablets for strangers or unreliable friends. But I think even they would have an opportunity of ventilating their story and in some cases, if innocent of any knowledge and bad motives, obtaining an acquittal. Some of the persons in some of the rather far-fetched circumstances which have been envisaged in argument would still be left in difficulties. But I do not think that Parliament intended to cater for them in its efforts to stop a serious evil."

Similarly, our legislature in enacting the Act was clearly intending to prevent trafficking in drugs and to penalise the possession of harmful drugs except by authorised persons. In the words of Lord Pearce we "must, therefore, attempt from the apparent intention of the Act itself to reach a construction of the word "possession" which is not so narrow as to stultify the practical efficacy of the Act or so broad that it creates absurdity or injustice."

In our opinion the word "possession" in the Act should be construed as that word has been construed by Lord Pearce and we would respectfully adopt his reasons as contained in his speech. There is, however, one qualification because of the statutory presumptions in the Act. Under our Act where a person is in possession of a bag or package which contains in fact a controlled drug it is presumed that he is in possession of and knows the nature of the controlled drug unlike in the United Kingdom where there is only a *prima facie* strong inference that he is in possession of its contents. Thus under our Act the burden rests on him to prove on a balance of probabilities that he was not in possession of and did not know the nature of the controlled drug which was contained in the package or bag.

For all these reasons the appeals of both appellants are dismissed.

Appeals dismissed.

Solicitors: *J. Tan Chor-Yong & Co.; Francis T. Seow.*

SINGAPORE BUS SERVICE LTD. v. LIM SWEE PHENG & SONS (PTE.) LTD.

[C.A. (Wee Chong Jin C.J., Chua & Rajah JJ.) November 13, 1979]

[Singapore — Civil Appeal No. 35 of 1979]

Workmen's Compensation — Indemnity claim by employers of deceased against negligent third party — Appeal — Scope of s. 18(b) of Workmen's Compensation Act, 1975 — Workmen's Compensation Act, 1975, ss. 6, 7, 18 & Third Schedule.

In this case Choor Singh J. allowed the respondents' application to be indemnified by the appellants in respect of the compensation which the latter made under section 18 of the Workmen's Compensation Act, 1975 to the dependants of their servant, Buang bin Abdullah. The latter died as a result of the negligence of the defendants' servant, Wee Chow Soon. The appellants appealed to the Court of Appeal.

Held, dismissing the appeal: (1) giving the language of the said section 18 its natural meaning in the context of the Workmen's Compensation Act as a whole, the indemnity which the employer is entitled to is of the whole amount of the compensation which the person who is responsible in law for the injury has caused him to pay;

(2) there is no ambiguity in the language of section 18(b) and there is nothing in the language of section 18 to suppose that it is intended that the amount of indemnity which the employer is entitled to is to be at large to be settled in an action;

(3) under the Workmen's Compensation Act, a child of a deceased workman is a dependant irrespective of whether such person is actually dependent on the workman's earnings or not and is entitled to recover compensation under the Act.

[The following authorities were cited in argument in the Court of Appeal:- *Public Transport Commission of New South Wales* v. *J. Murray More (N.S.W.) Pty. Ltd.* 6 A.L.R. 271, *X Politos & Anor.* v. *Sutton Tools Pty. Ltd.* 13 A.L.R. 575; *Tickle Industries Pty. Ltd.* v. *Hann & Anor.* (1972-73) 130 C.L.R. 321; *W. Cory & Son Ltd.* v. *France, Fenwick & Co. Ltd.* [1911] 1 K.B. 114; *The New South Wales Workers*